

Legislative Notice

No. 41

June 7, 2002

S. 625 – Local Law Enforcement Enhancement Act (“Hate Crimes” Bill)

Calendar No. 103

Reported from the Committee on the Judiciary on July 26, 2001, without amendment. Initially filed without a written report, but a Committee report was printed in May 2002 (Rept. 107-147); Senator Hatch filed Minority Views.

NOTEWORTHY

- The Senate will turn to S. 625 today. By unanimous consent, the Senate is to proceed to S. 625 following disposition of the supplemental appropriations bill, which was passed early this morning. No consent agreement governs the offering of amendments or limits the time for floor consideration.
- S. 625 has 51 sponsors, including Republican Senators Chafee, Collins, Ensign, G. Smith, Snowe, and Specter.
- S. 625 substantially expands current federal authority over hate crimes. The bill adds “gender”, “sexual orientation”, and “disability” (but not “age” or other categories) to the current statute, and it also considerably broadens the circumstances under which the Federal Government would assert jurisdiction to prosecute such crimes.
- The Senate last considered “hate crimes” language two years ago during consideration of the Defense Authorization Act. On June 20, 2000, the Senate agreed to *both* a Hatch amendment (on a vote of 50-49), and a Kennedy-G. Smith amendment that was similar to S. 625 of this Congress (on a vote of 57-42). [See RVA’s 135 and 136 of the 106th Congress]. No hate-crimes language was retained in the final defense authorization conference report.
- Senator Hatch is expected to offer a substitute similar to his amendment of two years ago. Other amendments are likely.

BACKGROUND

Under current federal law, it is unlawful to injure, intimidate, or interfere with any person because of his or her “race, color, religion, or national origin” if the person is participating in certain federally protected activities such as attending school, serving as a juror, traveling in interstate commerce, using public accommodations, or working. 18 U.S.C. §245. Since 1994, federal law also has required a heavier sentence for persons convicted of certain bias-motivated crimes. 28 U.S.C. §994 nt.

The Committee’s report (at 31) says that enactment of S. 625 “will significantly increase the ability of State and Federal law enforcement agencies to work together to solve and prevent a wide range of violent hate crimes committed because of bias based on the actual or perceived race, color, national origin, religion, sexual orientation, gender, or disability of the victim. This bill is a necessary, thoughtful, and measured response to the critical problem of hate-motivated violence facing our Nation.”

Congressional Action

As noted above, the Senate voted on hate-crimes language on June 20, 2000, during consideration of the Defense Authorization Act. The Senate agreed to a Hatch amendment by a vote was 50 (48 Republicans and Senators Byrd and Moynihan) to 49 (43 Democrats and six Republicans). Also, the Senate agreed to a Kennedy-G. Smith hate-crimes amendment that was similar to S. 625 of this Congress. That vote was 57 (13 Republicans and 44 Democrats) to 42 (41 Republicans and one Democrat).

On September 13, 2000, the House voted to instruct its conferees to accept the Kennedy-G. Smith language on the Defense Act. That vote was 232 (41 Republicans, 190 Democrats, one Independent) to 192 (174 Republicans, 17 Democrats, one Independent). On the preceding vote, a related motion-to-instruct that was favored by 82 percent of Republicans failed. However, the final conference report did *not* have a hate-crimes provision.

Further Reading

In recent years, the Policy Committee has published several papers on hate crimes. These are available on RPC’s website (rpc.senate.gov):

- 6/6/02 Telling “the Rest of the Story”: Committee’s Own Best Examples Reveal Problems With “Hate Crimes” Bill
- 6/5/02 Taking the “Hate Crimes” Test
- 5/20/02 Latest Facts on Crimes and “Hate Crimes”: “Hate Crimes” Versus All Crimes

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| 7/11/01 | The 1999 Facts on Crimes and “Hate Crimes”: “Hate Crimes” in Context |
| 10/18/00 | Violent Crimes and “Hate Crimes” in 1999: The FBI’s Newly Released Data |
| 10/4/00 | The False Premise of “Hate Crimes”: Are “Hate Crimes” Unique? Are They Worse Than All Other Crimes? |
| 9/29/00 | Passion, Politics, and “Hate Crimes”: Two More Horrific Cases from Virginia |
| 9/28/00 | Are Government-Defined “Hate Crimes” Different? Do Their Victims Suffer More? |
| 6/15/00 | Crimes and Hate Crimes: What the Numbers Tell Us |
| 6/14/00 | Fact Sheet on Crimes & Hate Crimes |
| 8/3/99 | The Kennedy Amendment on Commerce Appropriations: “Hate Crimes” Legislation Reappears |

See also, RPC’s Record Vote Analyses #135 and #136 from the 106th Congress (votes on the Hatch substitute and the Kennedy-G. Smith amendment, described above).

See also, Congressional Research Service, “Hate crimes: sketch of selected proposals and congressional authority” product no. RS 20678 (updated May 17, 2002), which is an abbreviated version of the 26 page document, “Hate crimes: summary of selected proposals and congressional authority” (RL30681).

BILL PROVISIONS

The bill is formally titled the
“Local Law Enforcement Enhancement Act of 2001.”

Section 2 of the bill contains 13 Congressional findings that generally are of two kinds – the first describes the problem and the second provides a constitutional rationale for the bill:

Section 2 states that Congress has found that “the incidence of violence motivated by the actual or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem” and that the “prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.”

The constitutional justification for the bill is lodged in the Commerce Clause and – with respect to bias based on real or perceived race, color, or ancestry, and (under a somewhat different rationale) with respect to bias based on religion or national origin – in the 13th, 14th, and 15th Amendments to the Constitution.

Section 7 of the bill, which is the heart of the “hate crimes” provisions, incorporates the constitutional dichotomy which is described in the paragraph above. That section requires a nexus to interstate commerce for crimes committed because of a bias based on “gender, sexual orientation, or disability.” No such nexus is required for crimes committed because of a bias based on race or color. The categories of “religion” and “national origin” are linked with race or color *but also* are in the paragraph with “gender, sexual orientation, or disability”.

Section 3 defines a “hate crime” as “a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person.” This is the same definition that appears in the Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103-322, §280003, 28 U.S.C. §994 note.

Section 4 provides that the Attorney General of the United States may provide “technical, forensic, prosecutorial, or any other form of assistance” in the investigation or prosecution of any felonious hate crime, and the AG may make grants of up to \$100,000 per jurisdiction per year “to assist State, local, and Indian law enforcement officials with the extraordinary expenses associated with the investigation and prosecution of hate crimes.” For each of fiscal years 2002 and 2003, the bill authorizes \$5 million for grants.

“In implementing the grant program, the Office of Justice Programs shall work closely with the funded jurisdictions to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.” When applying for a grant, a jurisdiction must demonstrate that it “consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience in providing services to victims of hate crimes.”

Section 5 authorizes the Office of Justice Programs within the Department of Justice to award grants to “State and local programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officers in identifying, investigating, prosecuting, and preventing hate crimes.” “Such sums as may be necessary” are authorized for this section.

Section 6 authorizes “such sums as may be necessary” for the Department of Justice and the Department of Treasury “to increase the number of personnel to prevent and respond to alleged violations” of the new hate crimes provisions contained in Section 7 of the bill.

Section 7 is the heart of the bill; it would add a new Section 249 to the “Crimes - civil rights” part of the United States Code. One of the two key provisions is this:

“(1) Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person--

“(A) shall be imprisoned not more than 10 years, fined in accordance with this title, or both; and

(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both, if--

“(i) death results from the offense; or

“(ii) the offense includes kidnaping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill.”

Notice that the bill does *not* allow the death penalty to be imposed.

The second key provision is identical to the first except that it applies to bias on the basis of “actual or perceived religion, national origin, gender, sexual orientation, or disability” *and* requires that there be a connection to interstate commerce. The definition of interstate commerce is so broad that there may be *no* situation in which it could *not* be invoked.

Before a hate crimes offense can be prosecuted by the Federal Government, the Attorney General or one of his top deputies must certify that State and local officials have been consulted and that “(1) the State does not have jurisdiction or does not intend to exercise jurisdiction; (2) the State has requested that the Federal Government assume jurisdiction; (3) the State does not object to the Federal Government assuming jurisdiction; or (4) the verdict or sentence obtained pursuant to State charges left demonstratively unvindicated the Federal interest in eradicating bias-motivated violence.”

Section 8 requires the United States Sentencing Commission to study “the issue of adult recruitment of juveniles to commit hate crimes.” If the study shows that an amendment is appropriate, the Federal sentencing guidelines are to be amended to provide an increased sentence for such adults.

Section 9 amends the Hate Crimes Statistics Act to require that the Government also collect information about hate crimes motivated by gender.

Section 10 provides that the provisions of the Act are severable.

ADMINISTRATION POSITION

No official Statement of Administration Policy has been received.

COST

On September 7, 2001, the Congressional Budget Office estimated that S. 625, as reported, would cost about \$20 million for the years 2002-2006 combined. The bill affects direct spending and receipts; therefore, pay-as-you-go procedures would apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

OTHER VIEWS

The Committee Report contains Senator Hatch's Minority Views. He said, in part:

“* * * Although well intentioned, S. 625 . . . is the wrong approach. Without sufficient justification, this legislation strains the constitutional limitations imposed on Congress and supplants the traditional powers of state and local law enforcement. Even more troubling, the legislation would in many cases provide less protection than existing laws to victims of violent hate crimes. The Hatch substitute, on the other hand, would bring progress in our fight against hate crimes without creating any of these problems.

“[S. 625] would raise five substantive policy concerns if enacted in its present form. The majority of these problems proceed from the flawed and unverified premise that underlies the legislation: States are unable or unwilling to prosecute hate crimes. From that premise the legislation proceeds to enact a new layer of unnecessary, far-reaching federal criminal legislation. * * * *

“There exists widespread agreement that the federal government must play a role in our nation’s efforts against hate crimes. But the role we define must respect the Constitution and the structure of our government, a structure that assigns to the states the primary role in criminal law enforcement. Rather than take a precipitous step that would potentially make every criminal offense motivated by a hatred of someone’s immutable traits a federal offense, we should equip states and localities with the resources necessary to undertake these criminal investigations and prosecutions on their own. At the same time, we should undertake a comprehensive analysis of the raw data that has been collected pursuant to the 1990 Hate Crime Statistics Act, including a comparison of the records of different jurisdictions – some with hate crimes law, others without – to determine whether there is, in fact, a problem in certain States’ prosecution of those criminal acts constituting hate crimes. The Hatch substitute is a measured legislative response that would accomplish both of these goals. Perhaps the study authorized by the Hatch substitute would demonstrate the need for legislation such as the Local Law Enforcement Act. To date, however, the case has not been made.”

POSSIBLE AMENDMENTS

Senator Hatch may have several amendments, including a substitute amendment which will be substantially identical to his amendment that passed the Senate before (see below). Other amendments also are possible, both germane and nongermane.

The Hatch Substitute

In his Minority Views, Senator Hatch said of his amendment:

“ . . . This alternative provides for a cross-sectional study to help determine the form that any additional federal hate crimes legislation should take. The study would collect and analyze statistics on hate crimes both in states that currently have hate crimes laws and in those states that currently do not have such laws. Based on these statistics, the Comptroller General would submit a report to Congress detailing the extent of hate crime activity and the success of state and local officials in prosecuting hate crimes. The study would provide Congress with a more comprehensive factual basis for determining whether, and to what extent, the federalization of hate crimes is an appropriate response to the states’ efforts.

“[Also,] the Hatch alternative would allow the Attorney General, at the request of a state or locality, to provide technical, forensic, prosecutorial, and any other assistance in the investigation and

prosecution of hate crimes, and would allow the Attorney General to provide grants of up to \$100,000 per case to assist states and localities in investigating and prosecuting hate crimes.”

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